

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID ROBERTS,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

Case No. 2:21-cv-02400-JDP (PC)

FINDINGS AND RECOMMENDATIONS
THAT THIS ACTION BE DISMISSED AS
DUPLICATIVE

Plaintiff is a state prisoner proceeding without counsel. His complaint, ECF No. 1, alleges that he has filed several lawsuits complaining of correctional staff's use of excessive force, but his cases have been repeatedly dismissed. Court records reflect that plaintiff has filed a complaint in this district that is nearly identical to the complaint in this case. *See Roberts v. State of California*, 2:21-cv-2395-DMC (PC) (E.D. Cal.).¹ Because the complaint in this action is duplicative of the complaint in plaintiff's other action, I will recommend that this action be dismissed. *See Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (holding that a complaint that "merely repeats pending or previously litigated claims" may be dismissed as frivolous under the authority of 28 U.S.C. § 1915).

¹ Plaintiff's other case was transferred Fresno division of this district, where it remains pending. *See Roberts v. State of California*, 1:22-cv-0131-HBK (PC) (E.D. Cal.).

1 Accordingly, it is hereby ORDERED that the Clerk of the Court is directed to assign a
2 district judge to this case; and

3 Further, it is RECOMMENDED that this action be dismissed as duplicative.

4 I submit these findings and recommendations to the district judge under 28 U.S.C.
5 § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court,
6 Eastern District of California. The parties may, within 14 days of the service of the findings and
7 recommendations, file written objections to the findings and recommendations with the court.
8 Such objections should be captioned "Objections to Magistrate Judge's Findings and
9 Recommendations." The district judge will review the findings and recommendations under 28
10 U.S.C. § 636(b)(1)(C).

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12 IT IS SO ORDERED.

13 Dated: April 13, 2022

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15 JEREMY D. PETERSON
16 UNITED STATES MAGISTRATE JUDGE
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